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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,241	08/28/2003	Mehul Patel	1400-49 (1622)	7185
7590	03/23/2005			EXAMINER LE, THIEN MINH
David M. Carter, Esq, Carter, DeLuca, Farrell & Schmidt, L.L.P. Suite 225 445 Broad Hollow Road Melville, NY 11747			ART UNIT 2876	PAPER NUMBER

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/650,241	PATEL, MEHUL	
	Examiner Thien M. Le	Art Unit 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9,13-23,25-33,37-41 and 43-52 is/are rejected.
- 7) Claim(s) 10-12,34-36 and 42 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 August 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

The information disclosure statements filed on 4/30/2004; 2/3/2005; and 3/3/2005 have been entered. Claims 1-52 are presented for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5, 7-9,13-23, 26-29,31-33,37-41, drawn to the apparatus and method claims 43-52, are rejected under 35 U.S.C. 102(b) as being anticipated by Danielson et al. [herein after referred as Danielson – 6,138,915].

Regarding claims 1 and 13, Danielson discloses a bar code reader comprising: one or more dimensional image arrays (13A and 13B of figure 13; 13Cs of 2D array 124C of figure 14) ; a lens assembly such as 90A, 90B, and 90C; and the method of reading the rows of pixel data in the manner as recited. It is noted that the mirror segments 82A-F are used to generate different focal planes for the optical reader [see figures 13-14 and their descriptions].

As can be seen, Danielson discloses the claimed invention.

Regarding claim 2, Danielson discloses a bar code reader for reading bar code labels which thus would embrace all limitations set forth in this claim.

Regarding claim 3, Danielson discloses the use of the reader for reading 1D or 2D bar codes [see figure 27, and its descriptions].

Regarding claims 4, 14 and 17, Danielson discloses that the reader can perform scans from the range of 3 inches (see figure 18 and its descriptions) up to about 48 inches (see the descriptions of figure 46); and thus would embraces the limitations set forth in these claims.

Regarding claims 5 and 15, see the len assembly 90 of Danielson. Also see lens assembly 30 in figure 2. As can be seen, Danielson discloses the lens assembly and carrier which would embrace all limitations set forth in these claims.

Regarding claim 7, see the discussions above regarding claim 1.

Regarding claim 8, the optical system as taught by Danielson as discussed in claim 1 would embrace all limitations set forth in this claim.

Regarding claim 9, see the discussions regarding claim 1.

Regarding claim 16, see the discussions regarding claim 1 (especially see descriptions of figure 14 for the detail operations of the 2D sensor array 124C).

Regarding claim 18, see the discussions regarding claim 16 and claim 1.

Regarding claims 19-20, see figures 13-14 of Danielson and the descriptions of figures 13-14.

Regarding claims 21-23, 25-29, 31-33, 37, all limitations have been addressed above.

Regarding claims 38-41, see the discussions regarding claim 1 above.

Especially, in the descriptions of figure 14, Danielson discloses the method of selecting optical focal plane among the stored rows of outputs from the array sensor 124C.

Regarding claims 43-52, the system as taught by Danielson, as has been discussed, would embrace all method steps set forth in these claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danielson et al. [referred as Danielson – 6,138,915; cited above] further in view of Hayashi (Hayashi – 6,540,361).

Regarding claims 6 and 30, the system as taught by Danielson has been discussed above. The claim differs in calling for a lens assembly that moves in the range of 0 μ m to 100 μ m. Reference to Hayashi is cited to show this claimed limitation. Accordingly, Hayashi discloses a lens 18 that is driven by actuator 19 as shown in Figure 16. Hayashi further discloses that the lens is moved in the range of 10 μ m to ten

of micrometers; and thus would overlap the claimed range of movements. Without any unexpected results, modifying Danielson's system to include the teaching of Haysahi would have been obvious. An ordinary skilled artisan would have been motivated to make the modification since moving the lens in such a manner would offer a high output that is suitable for high-speed driving as suggested by Hayashi.

Allowable Subject Matter

Claims 10-12, 24, 34-36 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior discloses an optical system comprising a lens assembly and mirror segments for producing a plurality of focal planes. However, the prior fails to disclose the claimed carrier comprising a plurality of segments as recited in claims 10-12. The prior also fails to disclose the first and the second carriers having the functions characteristics as recited in claims 24, 34-36, 42,

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien M. Le whose telephone number is (571) 272-

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2396. The examiner can normally be reached on Monday - Friday from 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Le, Thien Minh
Primary Examiner
Art Unit 2876
March 18, 2005